IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 10753 of 2006(E)

PETITIONERS:

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1. BIRIYAKUTTY, W/O. MOIDEEN,
   PADINJARAYIL VEEDU, P.O.KARAPPURAM, NILAMBUR,
   MALAPPURAM DISTRICT.

2. PATHUMMA, W/O. MOIDEEN,
   PADINJARAYIL VEEDU, P.O.KARAPPURAM,
   NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, MALAPPURAM.

2. THE TAHSILDAR, NILAMBUR.

3. THE INTELLIGENCE OFFICER, SQUAD NO.II,
   COMMERCIAL TAXES, MINI CIVIL STATION, TIRUR.

4. ABDU RAHIMAN, S/O. MOHAMMED,
   AILAKKARA, EDAKKARA, MALAPPURAM DISTRICT.

R1 TO R3 BY G.P. SRI. C.K. GOVINDANAs

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, ALONG WITH WPC 30421/06 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER DATED 1.5.2004 OF THE 3RD RESPONDENT.

EXT.P2 TRUE COPY OF NOTICE ISSUED TO PETITIONERS FROSM THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE COMMUNICATION ISSUED TO THE 1ST PETITIONER DATED 21.3.2000

EXT.P4 TRUE COPY OF REPRESENTATION DATED 28.2.2006 PREFERRED BY 1ST PETITIONER BEFORE 1ST RESPONDENT.

EXT.P4(a) TRUE COPY OF REPRESENTATION DATED 28.2.2006 PREFERRED BY 2ND PETITIONER BEFORE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 10753 OF 2006

Dated this the 17th day of July, 2007

JUDGMENT

Petitioners are the wives of one P.Moideen whose business premises, namely, saw mill was inspected by the Intelligence Officer of Sales Tax on 8.7.1999. Based on search, notice was issued to him calling for books of accounts. However, petitioners' husband did not respond and therefore penalty order was issued under Section 45A of the KGST Act imposing penalty of Rs. 3,22,182/-. A copy of the original penalty order was issued to the land owner of the property on which mill is located, who filed a revision against the said penalty order. The Deputy Commissioner vide Ext.P1 order produced in W.P.C.No. 30421 of 2006 noticed that the land owner was a 85 year old man who had transferred the mill to the petitioners' husband on 1.4.1999 and inspection was carried out only on 8.7.1999. Therefore penalty proceedings were set aside and remanded for reconsideration. Inspite of notice given to petitioners' husband in remand proceedings, he did not co-operate which ended up in Ext.P2 (WPC 30421 of 2006)

issued against him which is a reconfirmation of penalty against petitioners' husband. The penalty order was not disputed by the petitioners' husband.

2. The challenge is only against recovery proceedings on the ground that defaulter has transferred properties before issuing impugned orders. However Section 26A of the KGST Act creates a charge on the properties in respect of any liability that may fall due pursuant to any proceeding pending. When inspection was carried out and shop inspection report issued, it is only an initiation of proceeding under the Act which culminated in penalty order issued after due adjudication. On the face of it, the transfer deed executed in 2000 after initiation of penalty proceeding is covered by Section 26A of the Act. Therefore if transferred property is subject to charge by virtue of Section 26A of the Act, then such transfer should be ignored and property can be sold in recovery proceedings. There is no need for this Court to decide the issue because Section 46 of the RR Act authorises the District Collector to decide any claim petition. In fact this Court has vide interim order dated 6.4.2006 in W.P.C.10753 of 2006 directed

the Collector to dispose of the claim petition filed by the petitioners. I do not think any further order is required in both the cases. Therefore District Collector is directed to pass orders after hearing the petitioners before sale of properties.

W.Ps. are disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge